



General Terms and Conditions of Sale and Delivery of Baerlocher GmbH

Section 1 Scope

- (1) Sales and deliveries by Baerlocher GmbH are made exclusively subject to the following General Terms and Conditions of Sale and Delivery (hereinafter referred to as “Terms of Delivery”). These Terms of Delivery, properly incorporated, also apply to all future transactions with the Customer. By placing an order or accepting delivery, the Customer accepts the applicability of these Terms of Delivery.

- (2) Baerlocher GmbH rejects any Customer terms and conditions that conflict or are inconsistent with these Terms of Delivery. Such terms and conditions do not become part of the contract unless Baerlocher GmbH expressly consents to their application. Baerlocher GmbH gives any such consent in writing or in text form (such as by email). Under no circumstances does failure by Baerlocher GmbH to object to any reference to Customer terms and conditions in Customer documents constitute acceptance of Customer terms and conditions. These Terms of Delivery, properly incorporated, also apply if Baerlocher GmbH makes delivery unconditionally in the knowledge that the Customer’s general terms and conditions conflict or are inconsistent with the Terms of Delivery of Baerlocher GmbH.

Section 2 Quotation and conclusion of contract

- (1) Quotations made by Baerlocher GmbH are non-binding and do not create any obligation for Baerlocher GmbH.

- (2) A contract is only entered into when a confirmation of order from Baerlocher GmbH has been sent by Baerlocher GmbH in writing (including by email) to the address stated by the Customer. The content of the contract is based exclusively on the confirmation of order. Verbal agreements or promises require confirmation by Baerlocher GmbH in order to be effective.

- (3) If the quantity delivered by Baerlocher GmbH exceeds the agreed quantity by more than the customary minor amount (i.e., in the case of excess delivery), the quantity actually delivered is



deemed to be agreed unless the Customer objects to the excess delivery by the time and in the manner specified in section 7 (6) for proper notice of defects. The purchase price is then increased by the amount payable for the excess delivery as specified in section 5 (1).

Section 3 Delivery dates and delivery periods

- (1) Delivery dates and delivery periods are only binding if they have been confirmed by Baerlocher GmbH and if the Customer has provided Baerlocher GmbH with all the information and documents required for delivery and has made any advance payments as agreed. Agreed delivery periods begin on the date of the confirmation of order. Subsequent additions or changes to an order result in a reasonable extension of the delivery period.

- (2) Unforeseeable, unavoidable events beyond the control of Baerlocher GmbH, such as force majeure – including but not limited to war, natural disasters, raw material shortages, pandemics/epidemics, labour disputes or other production disruptions – release Baerlocher GmbH, for the duration of the events concerned, from its obligation to deliver or perform on time. In the case of goods to be delivered (hereinafter referred to as “goods”) or components of goods not produced by Baerlocher GmbH itself, compliance with agreed delivery dates and delivery periods is conditional upon correct and timely delivery to Baerlocher GmbH itself. The preceding two sentences do not apply if the delay is attributable to Baerlocher GmbH.

- (3) In the event of delays within the meaning of subsection (2) above, agreed delivery periods extend by the duration of the delay. Baerlocher GmbH will notify the Customer of the delay in a suitable manner. Either party has the right to withdraw from the contract if the end of the delay it is not foreseeable or if the delay lasts longer than three months.

- (4) Baerlocher GmbH may make partial deliveries for justified reasons if partial delivery is in the interest of and can reasonably be expected to be accepted by the Customer.

- (5) In the event of delay of delivery by Baerlocher GmbH, the Customer only has the right to withdraw from the contract if the delay is attributable to Baerlocher GmbH, the Customer has set a reasonable grace period for delivery under threat of non-acceptance of delivery and that grace period has expired without effect. If Baerlocher GmbH has already made partial deliveries



in accordance with the preceding subsection, the Customer only has the right to withdraw from the entire contract if the Customer has no interest in the partial deliveries.

- (6) If the Customer is in default of acceptance or in breach of other obligations to cooperate, Baerlocher GmbH has the right, without prejudice to its other rights, to place the goods in suitable storage at the Customer's risk and expense or, after setting a reasonable grace period, to withdraw from the contract.

Section 4 Shipping, transfer of risk

- (1) Unless otherwise specifically agreed with the Customer, Baerlocher GmbH has the right to use for shipment any suitable means of transportation as it may choose. Any costs incurred for freight charges, additional freight charges for express delivery or for air freight are borne by the Customer, irrespective of the reason for which they are incurred. Insurance is taken out only on the request and at the expense of the Customer.
- (2) Containers provided by Baerlocher GmbH are loaned to the Customer for up to two months after delivery of the goods. For the loan period, the Customer pays a reasonable container rental charge set by Baerlocher GmbH. The Customer undertakes to empty the containers provided by Baerlocher GmbH without undue delay and to notify Baerlocher GmbH's Lingen plant without undue delay that the containers are ready for collection. Baerlocher GmbH undertakes to collect the containers within a reasonable period after notification of readiness for collection. Delivery on Euro pallets is made only in exchange for an equal number of undamaged empty pallets.
- (3) If containers or pallets are lost or are returned in unusable condition, the Customer bears the cost of replacement or repair. This does not apply if loss or damage is not attributable to the Customer. The Customer must continue to pay the container rental charge for as long as the obligation to return has not been properly fulfilled due to the loss or damage.
- (4) Loaned packaging and loading units provided by Baerlocher GmbH remain the property of Baerlocher GmbH. Their resale is expressly prohibited. Loaned packaging and loading units must be handled with care and may not be used for purposes other than the storage of products delivered by Baerlocher GmbH. The Customer is liable for any damage in accordance with the statutory provisions.



- (5) The return of packaging, with the exception of loaned packaging, is subject to the provisions of the German Packaging Act [Verpackungsgesetz], as amended, and to any supplementary agreed terms.
- (6) Risk transfers to the Customer when the goods are handed over to the forwarding agent or to the Customer itself. This also applies if Baerlocher GmbH exceptionally assumes the shipping costs. If handover is delayed for reasons attributable to the Customer, risk passes to the Customer on the date of notification that the goods are ready for shipping.
- (7) The weight of the goods is calculated exclusively on the basis of the weight determined on leaving the Baerlocher GmbH plant supplying the goods.
- (8) If Baerlocher GmbH and the Customer agree to the application of Incoterms, the agreement to Incoterms relates to Incoterms 2020.

Section 5 Prices, terms of payment

- (1) If the parties have not expressly agreed on a specific price, the price applies that is listed in Baerlocher GmbH's price list at the time of the conclusion of the contract.
- (2) All prices quoted by Baerlocher GmbH are ex-works, excluding value added tax and excluding packaging and transportation costs, which are charged separately. In the case of delivery abroad, the Customer bears the public charges and customs duties incurred in connection with the importation of the goods.
- (3) If the agreed delivery date is more than four months after the conclusion of the contract and Baerlocher GmbH has been subject since the conclusion of the contract to unforeseeable wage, material or energy cost increases with regard to the goods, Baerlocher GmbH has the right at its reasonable discretion to increase the agreed price accordingly. Baerlocher GmbH will provide the Customer with evidence of the cost increase upon request. The Customer has the right to withdraw from the contract in the event of a requested price increase. The withdrawal must be declared to Baerlocher GmbH within one week of receipt of request for a price increase.



- (4) All invoices from Baerlocher GmbH must be paid within 30 days of receipt of the invoice. If this time limit expires without payment, the Customer is in default of payment with no reminder being required. The payment obligation is deemed to be fulfilled when the payment is credited to an account designated by Baerlocher GmbH. If the Customer is in default of payment, Baerlocher GmbH has the right to charge interest on arrears at the statutory rate. This is without prejudice to the assertion of any further claim for loss or damage arising from the delay.
- (5) Any agreed cash discounts do not apply if the Customer is in default of all or part of payment of other due invoices from Baerlocher GmbH.
- (6) Payment by bill of exchange or cheque is accepted only after prior written agreement and only conditional upon final settlement. Discount charges are at the Customer's expense.
- (7) In justified cases, including, in particular, if there are doubts as to the Customer's solvency or creditworthiness or if the Customer is in default of payment of other invoices from Baerlocher GmbH, Baerlocher GmbH has the right to request advance payment or the provision of security before delivery is made.
- (8) The Customer has the right of set-off only if the Customer's counterclaim is undisputed or established by final judgment. The Customer has a right of retention only to the extent that the Customer's counterclaim relates to the same contract and is undisputed or established by final judgment.

Section 6 Electronic invoicing (e-invoicing)

- (1) The Customer agrees to the electronic transmission of invoices (e-invoicing). The Customer accepts that it will not receive paper invoices for sales and deliveries from Baerlocher GmbH.
 - (a) Baerlocher GmbH has the right to send the Customer electronic invoices if the authenticity of the origin of the invoice and the integrity of its content are guaranteed by a qualified electronic signature or by electronic data interchange (EDI) in accordance with such section 14 (3) of the German Value Added Tax Act [Umsatzsteuergesetz].



- (b) Baerlocher GmbH also has the right to send electronic invoices by email if the authenticity of the origin of the invoice and the integrity of its content are ensured by business controls of Baerlocher GmbH that create a reliable audit trail between the invoice and the supply of goods or services (see section 14 (1) sentence 6 of the German Value Added Tax Act).
- (2) Baerlocher GmbH is not obliged to send invoices electronically. Baerlocher GmbH is free to send paper invoices on an ongoing or individual basis. This also applies in the event of technical difficulties or if the law of the recipient state conflicts with the provisions of this section 6.
 - (3) To enable e-invoicing, the Customer will provide Baerlocher GmbH with a suitable electronic receiving address. The Customer undertakes to notify Baerlocher GmbH of any change of the receiving address without undue delay. The Customer ensures that invoices can be received at the current receiving address.
 - (4) The Customer is responsible for verifying the authenticity of the origin of and the integrity of the content of and for the archiving of electronically transmitted invoices (consisting in each case of a PDF document, verification report and XML file with the verification report formats). The Customer bears sole responsibility for compliance with its statutory accounting and record retention obligations. If the invoice recipient concludes on verification that the authenticity of the origin or the integrity of the content of an invoice is not assured, the invoice recipient must notify Baerlocher GmbH without undue delay. For this purpose, the Customer will notify Baerlocher GmbH electronically of the details that led to a negative verification outcome, for example in the form of a verification report. The same procedure applies if an invoice is incorrect (e.g., if there are inconsistencies regarding price, quantities or terms). Correction of invoices by Baerlocher GmbH likewise takes place electronically and in accordance with these Terms of Delivery. If the incorrectness of an invoice is attributable to the Customer, the Customer bears the cost of correcting the invoice.

Section 7 Quality, rights in respect of defects, duty to inspect

- (1) The required quality of the goods upon risk transfer is determined exclusively by the specific terms agreed between the parties as to the properties, features and performance characteristics of the goods. The parties undertake to set down the information concerned in writing or in text form (such as by email).



- (2) Quality guarantees must be expressly agreed in writing or in text form (such as by email). In particular, information in catalogues, price lists or other information material provided to the Customer by Baerlocher GmbH, or any information describing the product, is not to be construed as a warranty that the goods will be of a particular quality.
- (3) Any written or verbal technical advice provided by Baerlocher GmbH is non-binding and does not release the Customer from its obligation to inspect the goods for suitability for their intended purpose. This also applies if the goods are generally recommended for a specific purpose.
- (4) Without prejudice to any rights in respect under the following provisions, the Customer must accept goods with insignificant defects.
- (5) Minor variations in the quality of the goods do not give the Customer any rights in respect of defects.
- (6) Customer rights in respect of defects are conditional upon the Customer having inspected the goods after handover and given Baerlocher GmbH written notice of any defects without undue delay and at the latest within five workdays, including the day of handover. Baerlocher GmbH must be notified in writing of any hidden defects without undue delay after their discovery. In the event of any notice of defects, Baerlocher GmbH has the right to inspect and test the goods concerned. The Customer will grant Baerlocher GmbH the time and opportunity needed for this purpose. Baerlocher GmbH may also require the Customer to return the goods concerned or a sample to Baerlocher GmbH for inspection by Baerlocher GmbH at the latter's expense.
- (7) Baerlocher GmbH will remedy defects, at its option, either by eliminating the defect or by replacement delivery of non-defective goods (collectively referred to hereinafter as "cure"). The Customer will grant Baerlocher GmbH the time and opportunity needed to cure the defect. Only in urgent cases where there is a risk to operational safety or in order to avert excessive loss or damage, or where Baerlocher GmbH is in default with the elimination of the defect, does the Customer have the right, after giving prior notice stating the reasons, to remedy the defect itself



or have it remedied by a third party and to reclaim from Baerlocher GmbH the necessary costs incurred for this purpose.

- (8) The Customer has no rights in respect of defects caused by reasons attributable to the Customer, such as defects due to improper use, improper operation or improper handling, in so far as the defects are not the responsibility of Baerlocher GmbH.
- (9) If a cure is unsuccessful or untenable for the Customer, or if Baerlocher GmbH has refused to provide a cure because it would be unreasonably costly, the Customer may, at its option and in accordance with the statutory provisions, withdraw from the contract or reduce the purchase price.
- (10) The Customer's rights under the German Civil Code [Bürgerliches Gesetzbuch] in respect of defects (sections 437 nos. 1. to 3. of the German Civil Code) become statute-barred twelve months after the transfer of risk in accordance with section 4 (6). This does not prejudice the statutory limitation period for recourse claims (section 445b of the German Civil Code). The statutory limitation periods apply to Customer claims for damages for reasons other than defects in the delivered goods (including but not limited to claims to damages for injury to life, limb or health and to claims under the German Product Liability Act [Produkthaftungsgesetz]) and to Customer rights in the case of fraudulently concealed defects, of defects wilfully caused by Baerlocher GmbH and of guaranteed characteristics.

Section 8 Liability and compensation

- (1) Baerlocher GmbH has unlimited liability in cases of wilful intent and gross negligence. In all other respects, in the case of a breach of fundamental contractual obligations constituting simple negligence, Baerlocher GmbH's liability is limited to the loss or damage characteristic of the type of contract and foreseeable as a possible consequence at the time of the conclusion of the contract (see section 8 (2), sentence 2). The Customer alone is liable for any infringement of any third-party industrial property rights (such as application patents) and for any breach of the law through the use and/or processing of the goods.
- (2) The limitation of liability referred to in subsection (1) above does not apply in cases of mandatory statutory liability, such as under the German Product Liability Act, of liability assumed under



guarantee, of fraudulent misrepresentation, of claims for injury to life, limb or health, or of grossly negligent or wilful breach of fundamental contractual obligations. Fundamental contractual obligations within the meaning of the first sentence are obligations whose fulfilment is essential for the proper execution of the contract, on whose fulfilment the Customer may generally rely and whose non-fulfilment jeopardises the achievement of the purpose of the contract.

Section 9 Retention of title

- (1) The goods remain the property of Baerlocher GmbH until full payment of all claims that Baerlocher GmbH has under the entire business relationship, including interest, costs and future claims, including those arising from contracts concluded with the Customer at the same time or later (hereinafter referred to as “retained goods”). In the case of goods not yet invoiced, the retained title serves to secure the balance owed to Baerlocher GmbH.

- (2) The Customer may sell the retained goods only in the ordinary course of business. The Customer has no right to pledge the retained goods, to transfer them by way of security or to make any other disposition jeopardising Baerlocher GmbH’s title. The Customer hereby assigns to Baerlocher GmbH in advance the claims arising from any resale. Baerlocher GmbH accepts this assignment. If the Customer sells the retained goods after processing or conversion or after combination with or together with other goods, the assignment of claim applies only to the amount corresponding to the price agreed between Baerlocher GmbH and the Customer plus a safety margin of 10% of that price. The Customer is revocably authorised to collect the claims assigned to Baerlocher GmbH on behalf of Baerlocher GmbH and in the Customer’s own name. Baerlocher GmbH may revoke this authorisation and the right to resell if the Customer is in default with fundamental obligations such as payment to Baerlocher GmbH. In the event of such revocation, Baerlocher GmbH has the right to collect the claim itself.

- (3) The Customer will provide Baerlocher GmbH at any time with all information requested about the retained goods or about the claims assigned to Baerlocher GmbH. The Customer must inform Baerlocher GmbH straight away of any seizure or attachment by third parties or claims by third parties in respect of the retained goods, at the same time handing over all necessary documents. At the same time, the Customer will notify the third party of Baerlocher GmbH’s retention of



title. The cost of defending against any such seizure, attachment or claim are borne by the Customer.

- (4) If the realisable value of the securities provided exceeds by more than 10% the sum total of the claims of Baerlocher GmbH to be secured under the business relationship with the Customer, the Customer has the right to request the release of the excess securities. Baerlocher GmbH is free to choose the securities to be released.
- (5) If the Customer is in default with fundamental obligations, such as payment to Baerlocher GmbH, and Baerlocher GmbH withdraws from the contract, Baerlocher GmbH may, without prejudice to other rights, demand the return of the retained goods and, after prior warning, realise them elsewhere in order to satisfy due claims against the Customer. In this event, the Customer will give Baerlocher GmbH or Baerlocher GmbH's agent immediate access to and release the retained goods. This does not prejudice the provision in section 107 (2) of the German Insolvency Code [Insolvenzordnung].
- (6) In the case of deliveries to other jurisdictions in which the above arrangement for retention of title does not have the same security effect as it does in Germany, the Customer will do everything in its power to create corresponding security interests for Baerlocher GmbH without undue delay. The Customer will cooperate in all measures, such as registration, publication, etc., that are necessary and conducive to ensuring the effectiveness and enforceability of such security interests.
- (7) The Customer undertakes to adequately insure the retained goods at its own expense, to provide Baerlocher GmbH with proof of such insurance and to assign to Baerlocher GmbH the claims under the insurance policy in the commensurate amount.

Section 10 Documents, confidentiality, analysis of samples and goods

- (1) Baerlocher GmbH reserves all rights to all documents (including but not limited to calculations, technical records, etc.) and samples provided to the customer in the course of contract negotiations and conclusion of the contract, irrespective of whether the contract is actually concluded. This also applies to documents created by the Customer on the basis of specific information or specifications from Baerlocher GmbH. The Customer may not use, reproduce or



make available to third parties any such documents or samples for purposes outside the contractual relationship with Baerlocher GmbH. They must be surrendered together with all copies and/or reproductions at Baerlocher GmbH's request. If no contract is concluded, the Customer must, without undue delay and without request, return all documents to Baerlocher GmbH or, at Baerlocher GmbH's option and request, delete them and provide suitable evidence of having done so.

- (2) The chemical composition of samples loaned or goods supplied by Baerlocher GmbH may not be analysed for purposes outside the contractual relationship.
- (3) The Customer must treat all requests for quotations, orders, supplies or services as trade secrets and keep them confidential.

Section 11 Data protection, consent, indemnity

- (1) Baerlocher GmbH attaches great importance to compliance with data protection laws, such as the German Federal Data Protection Act [Bundesdatenschutzgesetz] (BDSG) and the General Data Protection Regulation (GDPR). The Customer is aware that personal data must also be collected and stored by employees or agents of the Customer for the purpose of negotiating and concluding contracts and their performance. The Customer warrants that it is authorised to process the personal data of its deployed employees, freelancers or other agents (including but not limited to surname, first name, role in the company and, if applicable, phone number and email address) for the purpose of contract negotiations, contract conclusion, contract performance and communication in the context of the business relationship with Baerlocher GmbH and, in particular, that it is authorised to share such data with Baerlocher GmbH. The Customer will notify Baerlocher GmbH without undue delay in the event of termination of the contract of an employee or agent or permanent internal transfer of an employee or agent to another role. Baerlocher GmbH will then delete or pseudonymise the personal data of the data subject concerned straight away, unless this conflicts with statutory data retention obligations.
- (2) If third parties or authorities assert any claim against Baerlocher GmbH because the Customer has culpably violated the provisions of the third to fifth sentences of section 11 (1), the Customer will indemnify Baerlocher GmbH on first demand against all claims for damages, other claims, costs (including legal fees) or fines resulting from the violation. Baerlocher GmbH will notify the



Customer of any claim without undue delay and give the Customer the opportunity to comment. The Customer will support Baerlocher GmbH in the defence against the claims and will provide Baerlocher GmbH with all information and documents required for this purpose without undue delay. This does not prejudice Baerlocher GmbH's right to assert further claims.

Section 12 Final provisions

- (1) Subject to individual agreed terms within the meaning of section 305b of the German Civil Code, amendments and additions to the contract and/or to these Terms of Delivery, and any ancillary agreement, must be made in writing or in text form (such as email).
- (2) Should any provision of the contract and/or these Terms of Delivery be or become invalid or unenforceable in whole or in part, this does not affect the validity of the remaining provisions. Instead, the parties undertake to arrange for the invalid or unenforceable provision to be replaced with a valid or enforceable provision that comes as close as possible to the economic effect of the invalid or unenforceable provision. The same applies with regard to remedying any omission in the contract and/or these Terms of Delivery.
- (3) The exclusive place of jurisdiction and performance for all disputes arising from the contractual relationship is the City of Munich (München-Stadt). However, Baerlocher GmbH has the right to sue the Customer at the latter's statutory place of jurisdiction.
- (4) The contractual relationship is subject to the law of the Federal Republic of Germany. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and of German Private International Law is excluded.